

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2472 of 1990

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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MAHESH PRAKASH

Versus

COMMANDANT

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Appearance:

MR MN POPAT FOR MRS MC THAKKER for Petitioner  
MR DK NAKRANI FOR MR SS SHAH for Respondent No. 1

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CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

Date of decision:08/12/2000

C.A.V. JUDGEMENT

#. The petitioner is a member of the Railway Protection Force and at the relevant time was serving in the rank of Sub-Inspector of Railway Protection Force. A disciplinary action was taken against him with issuance

of charge sheet on 13-1-1984. Two charges were levelled against him, firstly, that he absented from duty from 23-10-1983 to 6-12-1983 unauthorisedly. The second charge was that he left Headquarters unauthorisedly on 23-12-1983 without permission from the competent authority when he was under suspension. The defence of the petitioner on the first charge was that he fell suddenly sick and remained on sick leave from 14-10-1983 to 22-10-1983. On the second charge, his explanation was that he attended the High Court of Gujarat at Ahmedabad on 23-12-1983 as he wanted to institute a case on an apprehension of deprivation of his legal rights of promotion from the rank of I.P.F. to A.S.O. It was also stated that he sought permission but the same was not allowed. After completing the enquiry, the Enquiry Officer filed his report. The Enquiry Officer came to the conclusion as regards charge no. 1 that his absence could not be treated to be unauthorised. His leave was subsequently sanctioned and debited as leave without pay. Thereafter, no notice was sent to him that he would be treated to be absent unauthorisedly. In the opinion of the Enquiry Officer, since the leave period was subsequently regularised from 10-10-1983 to 22-10-1983 as commuted leave and from 23-10-1983 to 7-12-1983 as leave without pay, the petitioner's absence for the period in question cannot be considered to be unauthorised. On charge no. 2, the Enquiry Officer came to the conclusion against the petitioner holding that he left the Headquarters without permission.

#. On submission of the enquiry report, the Disciplinary Authority, however, recorded his reasons on disagreement with the conclusion of the Enquiry Officer. On the basis of the evidence led in the enquiry, the Disciplinary Authority came to the following conclusion:

"He was sanctioned 45 days leave to commence from 14-10-83 as per his requisition. He was bound to avail the same from the date he had asked for failing which it automatically gets cancelled. Even if he was under sick list from 14-10-83 to 22-10-83 the leave being not availed from 14-10-83 stands also automatically cancelled. He on resumption on 23-10-83, on his own without getting the leave re-sanctioned and and also without informing to his superior authorities after making an entry in Zozanamcha of handing over the charge to his SIPF proceeded on leave. He cannot proceed on leave without getting it re-sanctioned as already sanctioned leave from 14-10-1983 lapsed. He had full opportunity to

get the leave re-sanctioned from SOR RJT even on telephone which he did not do so. He left the Headquarter on his own availed leave, therefore it is a purely unauthorised absence from duty."

#. Regarding his disagreement and conclusion against the findings of the Enquiry Officer, the Disciplinary Authority held that charge no. 1 was fully proved. He thus held that both the charges are fully proved and directed issuance of a show cause notice for imposing penalty on him for reducing his pay to the lower stage in the rank of SIPF for a period of two years with cumulative effect.

#. After reply to the show cause notice on proposed penalty, the Disciplinary Authority by the impugned order dated 30-1-1986 (Annexure D) came to the conclusion that both charges were proved. Punishment of reducing the petitioner to the lowest stage of his pay in the present rank of SIPF for a period of two years with cumulative effect was imposed.

#. The petitioner then went in Appeal. The Appellate Authority by the impugned order (Annexure E) dismissed the Appeal. The Appellate Authority held as regards charge no.1 that on scrutiny of leave file it appears that the dealing clerk without obtaining orders on the resumption report of the petitioner from the competent authority, unauthorisedly treated the leave as due and recorded the period of absence as leave without pay on his own accord. This act on the part of the dealing Clerk was unauthorised and could not be taken benefit of by the petitioner. The charge no. 1 was also held to be proved as leaving Headquarters during suspension period was clearly without permission from the competent authority.

#. The learned counsel appearing for the petitioner in assailing the order of the Disciplinary Authority and the Appellate Authority first raised an objection that the petitioner was not afforded an opportunity to show cause against the reasons and conclusions drawn by the Disciplinary Authority in disagreement with the findings of the Enquiry Officer on charge no. 1.

#. I have also heard learned counsel appearing for the Railway Protection Force. In the impugned order of the Disciplinary Authority dated 30-1-1986 which has been clearly recorded that along with show cause notice proposing penalty reasons for dissent of the Disciplinary Authority with the findings of Enquiry Officer were also

communicated to the petitioner. The relevant part of the impugned order dated 30-1-1986 reads:

"A show cause notice proposing the penalty of reducing to the lowest stage of his pay in the present rank of SIPF (under suspension) was issued vide no: RJE 40/44/2/1/84 dated 28/29 June 1985 giving reasons for dissent as regards charge no.1. He submitted his defence to the show cause vide no. MP/40/44/2/1/84 dt. 8.9.85."

#. The grievance raised by the petitioner that he was not afforded opportunity against the dissenting reasons recorded by the Disciplinary Authority is, therefore, without any foundation on facts. There is additional reason for not accepting the above argument advanced on behalf of the petitioner. The petitioner preferred an Appeal against the order of the Disciplinary Authority by which time it was clear to him that the Disciplinary Authority has dissented from the views of the Enquiry Officer. Before the Appellate Authority, no grievance was raised that the dissenting opinion of the Disciplinary Authority was not made known to the petitioner and he had no opportunity to meet the same. It has also not been demonstrated either before the Appellate Authority or in this Court that non-supply of a dissenting opinion of the Disciplinary Authority prior to the passing of the impugned order has in any manner caused any serious prejudice to the petitioner's defence.

#. The next ground urged is that the petitioner was promoted to the post of Inspector and the order of promotion was issued by Chief Security Officer. Therefore, Security Officer was below the rank of Chief Security Officer was not competent to impose punishment on the petitioner. This argument is without any legal force since the punishment imposed is not of dismissal, termination or reduction in rank. Provisions of Article 311(1) of the Constitution are not attracted to the impugned disciplinary action. The disciplinary action is regulated by the Railway Protection Rules of 1987 framed under the Railway Protection Force Act, 1957. Schedule I of the Rules of 1987 contains the office and designation of various officers of the Railway Protection Force. Schedule II under Rule 25 contains the various administrative powers conferred on superior officers of the force. Schedule III contains the disciplinary authorities and their powers which is referable to Rule 25 and 133. Entries at Sr. No.6 clearly shows that the penalty such as one imposed here on the petitioner, that

is, reduction to a lower stage in the existing scale of pay, can be imposed on authorities like Divisional Security Commissioner/Security Commissioner/Commanding Officer/Senior Security Commissioner. In the present case, the penalty has been imposed by the Commandant, Railway Protection Force and being a Commanding Officer, he was fully empowered under Entries 6 and 7 of Schedule III in exercise of powers under Rules 25 and 133 of the Rules.

##. Learned counsel appearing for the petitioner made some attempt to assail the findings of the Disciplinary Authority and the Appellate Authority on evidence and facts brought on record. This Court has perused the contents of the report of the Enquiry Officer, Disciplinary Authority and the Appellate Authority. After examining the provisions in the leave rules and the various powers of the Authorities dealing with grant and sanction of leave, a conclusion has been drawn against the petitioner that he was unauthorisedly absent. In these proceedings under Article 226 of the Constitution, it is not open to this Court to sit over the findings of the Disciplinary and Appellate Authorities and coming to a different conclusion. Such appreciation of evidence for the purpose of coming to a different conclusion is not the scope of power of this Court under Article 226. See the following observations of the Supreme Court in High Court of Judicature at Bombay Through Registrar vs. Shashikant S. Patil and Another 2000 (1) SCC 416:

"The Division Bench of the High Court seems to have approached the case as though it was an appeal against the order of the administrative/disciplinary authority of the High Court. Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion or grounds very similar to the above. But it cannot be overlooked that the departmental authority (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if the

enquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution."

##. Lastly, effort was made to persuade this Court to interfere in the quantum of punishment. Looking to the nature of the misconduct proved against the petitioner, this Court does not find that the punishment imposed is either harsh or disproportionate. Consequently, this Court finds no ground to interfere in the Disciplinary proceedings and the orders passed by the authorities of the Railway Protection Force.

In the result, the petition fails and is hereby dismissed, but in the circumstances, without any order as to costs. Rule is discharged.

(D.M. DHARMADHIKARI, C.J.)

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